

STATE OF IOWA



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TO: Government Oversight Committee
FROM: William P. Angrick II, Citizens' Aide/Ombudsman
RE: Chapter 23A
DATE: January 26, 2006



Chapter 23A of the Iowa Code, *Noncompetition by Government*, applies to cities, counties, school corporations and state agencies. All state units of government are subject to the provisions of Chapter 23A, regardless of whether monies are appropriated to the agency.

Section 23A.2 specifically identifies the activities and areas of business in which state agencies and political subdivisions are prohibited from competing. It states in part:

23A.2 STATE AGENCIES AND POLITICAL SUBDIVISIONS NOT TO COMPETE WITH PRIVATE ENTERPRISE.

1. A state agency or political subdivision shall not, unless specifically authorized by statute, rule, ordinance, or regulation:

a. Engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless such goods or services are for use or consumption exclusively by the state agency or political subdivision.

b. Offer or provide goods or services to the public for or through another state agency or political subdivision, by intergovernmental agreement or otherwise, in violation of this chapter. (Emphasis added.)

Relief for aggrieved parties is addressed in section 23A.4.

23A.4 RELIEF FOR AGGRIEVED PERSONS.

Any aggrieved person may, after pursuing remedies offered by chapter 17A, seek injunctive relief for violations of this chapter by filing an action in the district court for the county in which the aggrieved business is located.

A state agency or political subdivision found to be in violation of this chapter shall be assessed and shall pay to the aggrieved person fees and other expenses, as defined in section 625.28.

Chapter 17A and this section are the exclusive remedy for violations of this chapter. However, the office of the citizens' aide may review violations of this chapter and make recommendations as provided in chapter 2C. (Emphasis added.)

My office has received, investigated and resolved a number of complaints involving alleged violations of Chapter 23A. The following case was included in my office's 2005 annual report.

City Cancels "Sewer TV"

While some of us prefer not to think about what is inside sewer lines, there are people who work on them for a living. An owner of such a business called our office to complain when a city purchased a device to televise private sewer lines (in which a robotic camera is lowered into the sewer line to assess its condition).

Iowa law allows cities to compete with small business in some situations, if the city has passed an ordinance authorizing the activity. In this case, the city confirmed it was televising private lines, usually to look for footing tiles that were connected to the city's portion of the sewer line. The city manager said the city did not intend to compete with private businesses.

We asked that the city comply with Iowa law and adopt an ordinance specifically permitting this activity. Instead, the city chose to stop televising private lines, and agreed to adopt an ordinance if it ever resumed this activity. The small business owner was most thankful for our help.

The interesting aspect of Chapter 23A is that as long as the state agency or political subdivision has been authorized by statute to compete or if they have given themselves the authority to compete through a resolution or ordinance – their activities are not a violation of Chapter 23A. The process of creating a new statute, rule or ordinance requires a public hearing or suggests the affected party had the opportunity to participate in the process.

There are numerous exemptions (to Chapter 23A) listed in section 23A.2(2). We have also received complaints about competition by political subdivisions that fall within the listed exemptions. For example, we have received complaints about political subdivisions purchasing ambulances and installing sewer collection systems, both exempt activities in section 23A.2(2).

My office also has the authority under Chapter 2C to determine whether an agency is, for example, acting unreasonably or unfairly, even if the agency is acting lawfully. We had a complaint from a locksmith about a police department's practice of providing free "unlocking" services to citizens who get locked out of their private vehicles. The locksmith alleged that this was a violation of section 23A.2. The exemptions listed in section 23A.2(2) exempted the police department (from complying with 23A) if the performance of the activity was an essential corporate purpose or carried out the general corporate purpose of the city as defined in sections 384.24(3) and 384.24(4). We believed the police department's policy could be exempt under Chapter 23A as necessary for the "operation of the city or the health and welfare of its citizens." Although lawful, the issue then became whether the police department's policy was reasonable. Our review indicated that many police departments in Iowa and across the United States offer this type of free service to their citizens. For these reasons, we found that the police department's practice was not unreasonable, nor was it contrary to law.

For your information, my office added a field to our case management system in September of 2003 to track complaints received from small businesses or complaints affecting small business. The preliminary statistics from 2005 indicated that we received 90 complaints meeting these criteria and 93 in 2004. This tracking includes, but is not limited to, noncompetition by government.